

Memorandum

May 25, 2021

TO: WWUC members
FROM: Susan Saffery, Chair, WWUC Legislative Committee
Noah Reandeau, WWUC Legislative Coordinator
SUBJECT: Overview of the 2021 legislative session and Interim Work

Water utilities marked their 26th consecutive legislative session working together through the WWUC. This memo offers observations about the recently concluded legislative session, how the WWUC's coordination process worked during session, and some recommendations to help WWUC members prepare for next session. We appreciate the engagement of the WWUC membership in state legislative issues, with particular thanks to those who participated in our weekly legislative meetings.

Session Overview and WWUC Activity

The 2021 state legislative session was fully remote, as we continued to grapple with the challenges of COVID-19. With Democrats in control of both chambers, as well as the Governor's office, the session was expected to focus on issues surrounding COVID response, law enforcement, tax fairness, housing, racial and social justice, climate change and adopting biennial operating, capital and transportation budgets.

While economic and revenue forecasts leading up to the legislative session projected multi-billion dollars deficits that would have required significant cuts or new revenue, improving economic conditions and federal COVID funding, including the American Rescue Plan, provided the state with funding to pass a budget without major impacts.

Member communications this session

Our legislative coordinator, Noah Reandeau, did an excellent job preparing and distributing legislative information to WWUC members. As during past sessions, each week he sent out a legislative report, a matrix showing action on bills of interest, and a calendar of the next week's legislative activities. We've begun to break out bills of greatest interest to our members through a "priority" section in the bill tracking matrix, to provide a quick reference to key legislation.

In addition, Noah built a budget comparison matrix this session that detailed impacts for water utilities in the Operating, Capital and Transportation budget proposals. This matrix was allowed member to identify and compare key projects and their allocations in the respective proposals.

Review of legislation this session

As usual, most bill review and feedback occurred during the WWUC's weekly legislative meetings. These included the WWUC's Executive Committee and self-identified members who wish to serve on the Legislative Committee. We appreciated the Committee's robust discussions and useful sharing of information and insights. These meetings are open to all members and provide a forum to review key legislation, share thoughts about impacts and raise issues that may be of interest to other members. Join us next session!

We also added federal updates to the weekly legislative discussions this session. With all the federal stimulus funding related to COVID-19, commitment to federal infrastructure funding and other proposals impacting water utilities, we will continue to track these issues and share them at WWUC meetings.

While we were really pleased with the collective efforts of the WWUC legislative committee, we will continue to look for opportunities to fine-tune our work together during the interim, in preparation for the 2022 session. Noah and Susan will be following up with members of the legislative committee to get further input on the materials we share and the approach of our legislative committee. We welcome feedback from any WWUC member.

Looking forward and Recommendations for Interim Activities

The WWUC came into the 2021 legislative session prepared to address issues of interest that arose. Robust discussions at WWUC meetings over the interim meant members were well-versed on these issues and the WWUC legislative coordination process allowed us to stay on top of legislation when developments broke on issues throughout the session.

One critical issue is ongoing even after session has ended. The Governor's emergency order, banning utilities from shutting off customers in arrearage, is set to expire at the end of July. Utilities are in ongoing negotiations with the Governor's office and the Dept. of Commerce regarding guidelines for supporting our customers prior to shut-off, including notice, payment plans, and other key provisions. We continue to impress upon them the need for significant financial assistance for customers who are struggling to pay their overdue bills, as well as the differences between our public utilities and those regulated under the UTC. We will continue to provide updates on this issue.

Over the interim, it is important WWUC members stay abreast of major water topics and discussions. This includes tracking meetings of the Joint Legislative Task Forces on Water Supply and Water Resource Mitigation. These groups will be discussing topics that will likely result in legislation in the 2022 legislative session and could have major implications for water utilities.

In addition, WWUC members are encouraged to review their positions on key water topics and continue highlighting the good work they are doing. Legislators appreciate stories describing how utilities conserve finite water resources, support their customers and communities, and demonstrated themselves as good stewards of the environment. Efforts to help legislators better understand the work of public utilities are necessary and the ability to show our positive work will better position us when challenging issues arise. Finally, it is important for WWUC members to discuss if there is legislation they would like to pursue in the 2022 legislative session.

As we look ahead and try to predict what will happen this interim and next session, we should keep several points in mind:

- State legislators will not be up for election in the Fall. However, due to the November 2022 elections, they may be less likely to address controversial issues in the 2022 legislative session.

- 2021 is the first year of a two-year fiscal biennium. Bills that did not pass this legislative session will carry over to next year. Next year will be a short, 60-day legislative session.
- The legislature is currently expected to reconvene for a special session later this year, with the need for a new transportation revenue package as potentially further appropriation of federal ARPA funds. Implementation of the Washington Climate Commitment Act ([E2SSB 5126](#)) and the low carbon fuel standard legislation ([E3SHB 1091](#)) were initially tied to the passage of a transportation revenue package, prior to the Governor’s veto of those subsections.
- The Joint Legislative Task Forces on Water Supply and Water Resource Mitigation, established in 2018 through the Hirst/Foster legislation, [ESSB 6091](#), will likely meet during the interim.

These points suggest a future of both opportunity and risk for water utilities. The clearest recommendation is that we must prepare for the 2022 legislative session and engage in pre-session activities important to WWUC members. Several steps will help utilities succeed in legislative negotiations, while also improving our position in forums outside the legislature:

- Updating the WWUC’s legislative and administrative priorities.
- Continuing outreach and coordination efforts with other interest groups.
- Potentially determining which issues, if any, the WWUC should develop positions on, as in 2004 through development and adoption of the WWUC’s principles on instream flow legislation, in 2012 with the FirePALS legislation, and with adoption of the WWUC’s white paper on issues raised by the state Supreme Court’s 2013 *Swinomish* decision.
- Informing legislators through tours of local utility facilities combined with presentations about local water issues and the need for legislative action to resolve these issues and provide financial assistance.
 - Ongoing threats to funding for the Public Works Assistance Account is a particularly urgent issue for WWUC members to discuss with their legislators, and to discuss within the WWUC for ideas about how to continue rebuilding and strengthening the state’s role in helping utilities meet their local water infrastructure investment needs.

Lobbyist Meetings (held as requested).

WWUC member lobbyist discussions are held on an as-needed basis during the interim. When important issues come up in discussions among the WWUC Executive or Legislative Committee, Noah will contact WWUC’s member lobbyists to gain feedback and suggestions and coordinates further as needed.

Policy Bills That Passed the Legislature

While overall there was less legislation of interest in the 2021 session, several policy bills passed the legislature affecting water utilities. Below are the most relevant of these:

Lead in Drinking Water

[E2SHB 1139](#) designates the Department of Health (DOH), rather than community water systems, as the principal agency in regard to lead testing, remediation, and other actions at elementary and secondary schools. It requires school districts and charter schools to cooperate with the DOH or contract for sampling and testing for lead contamination at drinking water outlets in school buildings built, or with all plumbing replaced, before 2016. Finally, it directs school districts and schools to communicate information, take mitigation measures, and adopt an action plan if test results reveal lead concentrations that exceed stated thresholds.

Risk-Based Water Quality Standards for On-Site Nonpotable Water Systems

[ESHB 1184](#) requires the Department of Health to adopt rules for risk-based water quality standards for the on-site treatment and reuse of nonpotable alternative water sources for nonpotable end uses. Utilities will be participating in this rule making process.

Supporting Emergency Shelters and House Through Local Planning and Development Regulations

[E2SHB 1220](#) updates the housing goals of the Growth Management Act (GMA) to include planning for and accommodating affordable housing. It requires GMA jurisdictions to address moderate to extremely low-income housing, moderate density housing options, and racially disparate impacts and displacement in the housing element of comprehensive plans. It requires the Dept of Commerce to provide inventory and analysis of existing and projected housing needs in the housing element of the comprehensive plan. It also prohibits a city from preventing transitional housing or permanent supportive housing in zones where residential dwelling units or hotels are allowed, and from preventing indoor emergency shelters and indoor emergency housing in zones where hotels are allowed unless the city has an ordinance authorizing such shelters and housing in a majority of zones within 1 mile of transit. Finally, it directs GMA jurisdictions to consider certain policies that encourage the construction of accessory dwelling units to meet affordable housing goals.

Washington Climate Commitment Act

[E2SSB 5126](#) passed in the waning days of the session. It establishes a program for capping emissions from certain entities and investing emission allowance auction proceeds in certain programs, projects, and activities. In order to ensure greenhouse gas (GHG) emissions are reduced consistent with the state's 2030-2050 emissions limits, the Dept of Ecology must implement a cap on GHG emissions from covered entities and a program to track, verify, and enforce compliance. There are two key aspects of this bill water utilities will be particularly interested in as rulemaking and establishing of the grant programs move forward. First, what are the implications of these new requirements on our operations? We need to understand the expectations and potential related costs. Second, we need to track the establishment of the Natural Climate Solutions Account, which is intended to increase environmental resilience to climate change. This includes restoration of estuaries and marine habitat, flood risk reduction and floodplain restoration, sustainable supply of water, improved stormwater infrastructure and forest protection.

Legislation That Did Not Pass

WWUC members also dedicated time to a number of other bills that were considered during the legislative session. These included those below:

Promoting Salmon Recovery through Revisions to the State's Comprehensive Planning Framework

[E2SHB 1117](#) would have added salmon recovery as a goal under the GMA. It would have required that the land use element of comprehensive plans adopted under the GMA include a strategy that achieves net ecological gain of salmon habitat. It would further have required the capital facilities element and transportation element of comprehensive plans adopted under the GMA include a schedule for elimination of all identified fish passage barriers. Finally, it would have required the Dept of Fish and Wildlife to adopt rules that establish criteria for net ecological gain which certain counties and cities must meet through adoption of comprehensive plans.

Public Meeting Accessibility and Participation

[ESHB 1329](#) would have encouraged public agencies to provide remote access to governing body meetings of, and to record and post recordings of meetings online for at least six months. It would also have required governing bodies to provide opportunity for public comment at or before every regular meeting at which final action is taken, except in emergency situations. Finally, it would have required governing bodies, if feasible, to provide an opportunity for remote oral comment for an individual upon request if the individual will find physical attendance at a meeting difficult.

Accessory Dwelling Units

[HB 1337](#) would have provided that cities and counties that adopt specified policies regarding accessory dwelling units may qualify for a distribution from the accessory dwelling unit incentive account. Distributions from the accessory dwelling unit incentive account would have been based on the number of qualifying new accessory dwelling units constructed after the regulations were adopted. Finally, it would have provided for the transfer from the General Fund of \$1,000,000 each fiscal year to be used for distributions.

Delinquent and Unpaid Utility Services Charges

[HB 1421](#) would have prohibited, with limited exception, a city or town from collecting delinquent residential utility charges from a property owner or having a lien on the property if the account was listed in a tenant's name. It also would have required a city to collect unpaid utility charges from a tenant within 12 months of the expiration of Governor's Proclamation 20-23.14 et seq. and to waive any remaining charges after the 12-month collection period is over.

Providing Support for Utility Customers Impacted by COVID-19 through Payment Plans

[SB 5472](#) would have provided support for utility customers impacted by COVID-19 through payment plans, including partial forgiveness of arrearages and a credit against the public utility tax.

Biennial Budgets

A number of items of interest to water utilities were also included in the biennial Operating ([ESSB 5092](#)), Capital ([SHB 1080](#)) and Transportation ([SSB 5165](#)) budgets that were passed by the legislature, including:

Operating Budget

- Department of Ecology Water Resources SF-S Reduction (-\$178,000): One-time savings are achieved through Ecology holding a 1.0 FTE vacancy in its Water Resources Program for the 2021-23 biennium. This program is responsible for statewide water resource management activities, which include making decisions on applications for water rights, establishing instream flows, and enforcing the water code.
- Water Rights Adjudication (\$1.25 million): Adjudicating water rights is a judicial process intended to increase certainty for water users and the state. Ecology will begin pre-adjudication work in the Nooksack and Upper Columbia watersheds including mapping, identification of individuals subject to adjudication, and development of data systems. This item also provides Whatcom County pass-through funding for work and contracts for facilitation and mediation services in support of a water rights settlement process.

- Water Banking Grants (\$10 million): One-time funding is provided to establish a pilot grant program for water banks in rural counties, including reviewing water banking grant applications, finalizing water banking agreements, and distributing grant funds.
- Group B Water Systems (\$984,000): Funding is provided for technical assistance and planning related to Group B water systems in local jurisdictions.
- Lead in Drinking Water (\$2.8 million): Funding is provided for [Engrossed Second Substitute House Bill 1139](#) (lead in drinking water), which requires the Department of Health to sample and test drinking water from state-funded elementary and secondary schools located in buildings built, or for which all plumbing was replaced, before 2016.
- ARPA/Low-Income Water & Wastewater (\$20 million): Expenditure authority is provided for the Low-Income Household Water Assistance Program, pursuant to ARPA.

Capital Budget

- Yakima River Basin Water Supply (\$42 million)
- Funding is provided for work on projects under the Yakima River Basin Integrated Plan.
- Columbia River Water Supply Development Program (\$45 million)
- Funding is provided for continued implementation of the Columbia River Basin Supply Development Program.
- Centennial Clean Water Program (\$40 million)
- Water Pollution Control Revolving Fund (\$315 million)
- Streamflow Restoration Program (\$40 million)
- PFAS Pilot Program (\$750,000)
- Water Banking Grant Program (\$5 million)
- Public Works Assistance Program (\$129 million)
- Drinking Water Assistance Program (\$34 million)
- Drinking Water Construction Loans (\$11 million)
- Affordable housing utility connections (\$42 million)

Transportation Budget

Department of Transportation Study (\$1 million): Funding is provided to identify county-owned fish passage barriers, streamline and update the County Road Administration dashboard, and study the use of county road right-of-way as a potential revenue source.